

PEARSON, J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

BEN RUDICK & SONS, INC.,	)	
	)	CASE NO. 4:19CV1284
Plaintiff,	)	
	)	
v.	)	JUDGE BENITA Y. PEARSON
	)	
KEVIN SAUKKO,	)	
	)	<b><u>MEMORANDUM OF OPINION AND</u></b>
Defendant.	)	<b><u>ORDER</u></b>

On June 4, 2019, third-party Defendant<sup>1</sup> Auto-Owners Insurance Company unilaterally removed this matter from Warren Municipal Court (Case No. 19 CVI 928), citing the general removal statute, [28 U.S.C. § 1441](#). [ECF No. 1](#).

“Except as otherwise provided,” a civil action brought in state court may only be removed “by the defendant or defendants” in that action. [28 U.S.C. § 1441\(a\)](#). The Supreme Court recently confirmed the third-party counterclaim defendants have no right to remove a civil action to federal court under that general removal statute. [Home Depot U.S.A., Inc. v. Jackson](#),     S. Ct.     , [2019 WL 2257158, at \\*4 \(May 28, 2019\)](#) (“[W]e conclude that § 1441(a) does not permit removal by any counterclaim defendant, including parties brought into the lawsuit for the first time by the counterclaim.” (footnote explanation omitted)).

---

<sup>1</sup> The case was filed in Warren Municipal Court on April 16, 2019, Plaintiff Ben Rudick & Sons, Inc., against Defendant Kevin Saukko. [ECF No. 1-3 at PageID#: 20](#). On or about May 15, 2019, Kevin Saukko filed a third-party complaint against Auto Owners seeking indemnity and a refund of premiums paid. [ECF No. 1 at PageID#: 2](#); [ECF No. 1-1 at PageID#: 12-14](#). On the Warren Municipal Court publicly-available docket, Auto-Owners is listed as a third-party defendant. Case No. 2019 CVI 000928 (Warren Mun. Ct.), <https://benchmark.warrenmuni.us/benchmarkweb/Home.aspx/Search>.

(4:19CV1284)

Even before that ruling, however, it was well-settled in the Sixth Circuit that third-party defendants cannot remove to federal court under § 1441. [\*In re Mortg. Elec. Registration Sys., Inc.\*, 680 F.3d 849, 853 \(6th Cir. 2012\)](#) (“[A] counterclaim or third-party defendant is not a ‘defendant’ who may remove the action to federal court.” (citing [\*Shamrock Oil & Gas Corp. v. Sheets\*, 313 U.S. 100, 104-08 \(1941\)](#); additional citation omitted)); [\*First Nat’l Bank of Pulaski v. Curry\*, 301 F.3d 456, 462 \(6th Cir. 2002\)](#) (“We hold that third-party defendants are not ‘defendants’ [who may remove] for purposes of § 1441(a).”); *see also* [\*Thomas v. Shelton\*, 740 F.2d 478,488 \(7th Cir. 1984\)](#); [\*Westwood Apex v. Contreras\*, 644 F.3d 799, 805-06 \(9th Cir. 2011\)](#)).

Auto-Owners urges that the federal district court has exclusive subject-matter jurisdiction over Kevin Saukko’s third-party complaint. [ECF No. 1 at PageID#: 7-8](#). But that assertion, even if true, does not by itself compel removal. If the state court lacks jurisdiction to hear a given claim, then it will abstain from hearing that claim, and it can be brought again at a later time in a court of competent jurisdiction.

The matter was improvidently removed, and it will be remanded to Warren Municipal Court.

IT IS SO ORDERED.

June 10, 2019  
Date

/s/ Benita Y. Pearson  
Benita Y. Pearson  
United States District Judge